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INTRODUCTION

In today's global economy, parties are increasingly dependent on international trade.[1] This increase in trade has spurred transnational litigation, ranging from Nicaraguan banana workers suing Dole in the United States[2] to a United States branch of a United Kingdom-based corporation suing a Saudi Arabian corporation in the Kingdom of Bahrain.[3] In the latter case, the plaintiff successfully obtained recognition—the act of adopting another court's judgment—of the Bahraini judgment in a New York state court.[4] The plaintiff then attempted to enforce the New York judgment in District of Columbia and

1. Rapture Shipping, Ltd. v. Allround Fuel Trading B.V., 350 F. Supp. 2d 369, 373 (S.D.N.Y. 2004) ("The importance of extending comity . . . has only increased as our economy has become increasingly global and dependent upon international commerce.").

2. First Amended Complaint, Tellez v. Dole Food Co., No. BC312852, 2004 WL 5468592 (Cal. Super. Ct. L.A. Cnty. Sept 7, 2004). For a discussion of the *Dole* litigation saga, see Armin Rosencranz & Stephen Roblin, Tellez v. Dole*: Nicaraguan Banana Workers Confront the U.S. Judicial System*, 7 GOLDEN GATE U. ENVTL. L.J. 113 (2014).

3. Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros. Co., 957 N.Y.S.2d 602 (Sup. Ct. 2012).

4. *Id*.

Pennsylvania state courts.[5] These two courts, however, disagreed on their obligations to enforce the judgment.[6]

Such diverging state recognition and enforcement laws are common.[7] Congress has abstained from standardizing the states' obligations to recognize and enforce foreign judgments,[8] thereby permitting individual states to develop their own standards for foreign judgment recognition and enforcement.[9] Because the United States Supreme Court generally cannot review these state court decisions, states lack a central reviewing body that would foster uniformity.[10] Divergent state treatment and lack of Supreme Court review undermine the predictability critical to the smooth functioning of businesses.[11]

In some states, the recognition and enforcement of foreign judgments is a product of the common law rather than the legislature.[12] The genesis of foreign judgment recognition in common law is found in *Hilton v. Guyot*, wherein the Supreme Court held in 1895 that foreign judgment

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5. Ahmad Hamad Al Gosaibi & Bros. Co. v. Standard Chartered Bank, 98 A.3d 998, 1005 (D.C. 2014); Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros. Co., 99 A.3d 936 (Pa. Super. Ct. 2014).

6. The differing results turned on the applicability of the United States Constitution's Full Faith and Credit Clause to foreign judgments recognized by a sister state. *Ahmad Hamad Al Gosaibi*, 98 A.3d at 1005; *Standard Chartered Bank*, 99 A.3d at 936.

7. For a general discussion of non-uniformity among states, see Ronald A. Brand, *The Continuing Evolution of U.S. Judgments Recognition Law*, 55 COLUM. J. TRANSNAT'L L. 277 (2017).

8. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 481 cmt. g (AM. LAW INST. 1987).

9. *Id*. Congress has, however, enacted specific legislation related to foreign libel judgments. Securing the Protection of Our Enduring and Established Constitutional Heritage Act, Pub. L. No. 111–223, 124 Stat. 2480 (codified at 28 U.S.C. §§ 4101–05 (2012)).

10. Aetna Life Ins. Co. v. Tremblay, 223 U.S. 185 (1912) (holding that the Court lacked jurisdiction to review a state court decision on foreign judgment recognition because it did not implicate any right protected by the Constitution). RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 481 cmt. a ("Ordinarily, a decision of a State court granting or denying recognition to a foreign judgment is not subject to review by the United States Supreme Court, unless the decision raises questions under the United States Constitution, for example, intrusion into the foreign affairs of the United States.").

11. Rapture Shipping, Ltd. v. Allround Fuel Trading B.V., 350 F. Supp. 2d 369, 373 (S.D.N.Y. 2004) ("Affording foreign courts a measure of deference brings a degree of predictability to international commerce that is critical to a smooth functioning of business.").

12. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 481.

recognition was a federal issue and was governed by international law.[13] By 1926, however, state courts began rejecting *Hilton*, viewing foreign judgment recognition as an issue of state rather than international law.[14] After *Erie Railroad Co. v. Tompkins*,[15] federal courts in diversity actions also began employing state recognition laws.[16] As a result, state common law as employed in both state and federal court is as untethered to a central reviewing body as state statutes, further straining uniformity and predictability.[17]

In an attempt to harmonize the diverging state practices, the National Conference of Commissioners on Uniform State Laws ("Uniform Law Commission" or "ULC") promulgated a uniform statute with a list of factors that courts use in determining whether to recognize a foreign judgment.[18] Although statutes and interpretation continue to vary among states,[19] a uniform statute injects predictability through similar statutory language.[20] This added predictability has enticed the majority of states to enact a variant of the uniform recognition act.[21]

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13. Hilton v. Guyot, 159 U.S. 113, 228 (1895).

14. *See, e.g.*, Johnston v. Compagnie Generale Transatlantique, 152 N.E. 121, 123 (N.Y. 1926).

15. Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).

16. *See, e.g.*, Somportex Ltd. v. Phila. Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971).

17. *See, e.g.*, Alberta Sec. Comm'n v. Ryckman, 30 P.3d 121 (Ariz. Ct. App. 2001).

18. UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT (UNIF. LAW COMM'N 1962); UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (UNIF. LAW COMM'N 2005).

19. *Compare* Ahmad Hamad Al Gosaibi & Bros. Co. v. Standard Chartered Bank, 98 A.3d 998, 1005 (D.C. 2014), *with* Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros. Co., 99 A.3d 936 (Pa. Super. Ct. 2014). *See also infra* text accompanying note 162 (describing disagreement between New York and D.C. courts on Full Faith and Credit Clause's implications on foreign judgments).

20. Hilton v. Guyot, 159 U.S. 113, 163 (1895) ("The most certain guide, no doubt, for the decision of such questions is a treaty or a statute of this country."). Although Justice Gray's comment is in support of a federal statute, the added predictability a state statute gives to a state is equivalent to that of a federal statute to federal law.

21. *Foreign-Country Money Judgments Recognition Act*, UNIFORM L. COMMISSION, https://www.uniformlaws.org/committees/community-home?CommunityKey=9c11b007-83b2-4bf2-a08e-74f642c840bc [https://perma.cc/SW23-6QHF] (last visited June 1, 2020) (Alabama, Arizona, California, Colorado, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Texas, Tennessee, Utah, Virginia, and Washington);

Louisiana, however, has not enacted a uniform recognition act. In 1985, the Louisiana Legislature enacted the Uniform Enforcement of Foreign Judgments Act ("EFJA"), which was intended to codify the state's obligation to recognize sister-state judgments under the Full Faith and Credit Clause of the United States Constitution.[22] Somewhat confusingly, the use of "foreign" in the EFJA refers to U.S. court judgments foreign to the enacting state, not foreign to the country. Under recognition laws, on the other hand, "foreign" refers to foreign-country judgments.[23] Moreover, the EFJA *enforces* sister-state judgments, whereas the recognition act *recognizes* foreign-country judgments.[24] The EFJA thus serves a fundamentally different purpose than recognition acts, and the recognition process is a condition precedent to the enforcement process.[25]

In part due to confusion from non-uniformity of state recognition laws, litigants in Louisiana have attempted to use the EFJA to recognize and enforce foreign court judgments.[26] In *Baker & McKenzie Advokatbyra v. Thinkstream*, the plaintiff attempted to enforce a Swedish judgment under the EFJA.[27] The Louisiana First Circuit Court of Appeal held that the

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Foreign Money-Judgments Recognition Act, UNIFORM L. COMMISSION, https://www.uniformlaws.org/committees/community-home?CommunityKey=ae280c30-094a-4d8f-b722-8dcd614a8f3e [https://perma.cc/2FLA-8A5P] (last visited June 1, 2020) (Alaska, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, U.S. Virgin Islands, Virginia, and Washington).

22. U.S. CONST. art. IV, § 1, cl. 1. Act No. 464, 1985 La. Acts 882 (codified at LA. REV. STAT. §§ 13:4241–47 (1985)).

23. Baker & McKenzie Advokatbyra v. Thinkstream Inc., 20 So. 3d 1109, 1117–20 (La. Ct. App. 1st Cir. 2009). *See* UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT.

24. REVISED UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT, Prefatory Note (UNIF. LAW COMM'N 1964); UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT (UNIF. LAW COMM'N 1962).

25. The EFJA's enforcement purpose may complement the Recognition Acts' recognition purpose in some jurisdictions. After recognition of the foreign-country judgment in a U.S. court, a party may enforce that sister-state recognized judgment through the EFJA. *See* Rodney Page & Joseph Smallhoover, *Enforcing Non-US Court Judgments in the US Can Be Difficult*, LAW 360 (Aug. 15, 2017, 11:55 AM), https://www-law360-com/articles/954145/enforcing-non-us-court-judgments-in-the-us-can-be-difficult [https://perma.cc/TY75-C3UN].

26. *See, e.g.*, Rouffanche v. D'Spain, 506 So. 2d 218 (La. Ct. App. 5th Cir. 1987).

27. *Baker*, 20 So. 3d at 1109.

EFJA does not apply to foreign judgments.[28] Approving of the *Baker* court's holding, the Louisiana Legislature added an official Editor's Note to the procedural code article governing foreign judgment enforcement, affirming that the EFJA is inapplicable to foreign judgments.[29] Under this standard, a Louisiana plaintiff can only enforce the judgment by filing an action on the judgment, which requires the plaintiff to argue the case a second time and affords the defendant an undeserved second chance to defend with a full due-process trial.[30]

The *Baker* court's judicial solution, however, is insufficient. Louisiana, as a mixed jurisdiction,[31] retains a rich civilian heritage that has limited its sources of law to legislation and custom.[32] Yet, despite its civilian tradition, Louisiana courts have long recognized a "systemic respect" for jurisprudence, and the Louisiana Supreme Court considers its decisions binding.[33] Even if the Louisiana Supreme Court were to adopt the Louisiana First Circuit's holding in *Baker*, however, Louisiana would still be without a clear standard governing foreign judgment recognition law because the only issue presented to the *Baker* court was whether a foreign judgment could be enforced through the EFJA. Notably unanswered in *Baker* is the question of judgment recognition.

28. *Id*. at 1111.

29. LA. CODE CIV. PROC. art. 2541 (2017).

30. An important distinction between the original and second trial, however, is that the first trial is centered on the merits of the original cause of action, whereas the second trial hinges on whether the foreign judgment should be recognized under principles of comity. REVISED UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT, Prefatory Note (UNIF. LAW COMM'N 1964) ("While there is no constitutional requirement that a debtor who has had a full due process trial in one state need be given a second full scale trial on the judgment in another state, this is the only course generally available to creditors."); *Baker*, 20 So. 3d at 1119 n.10 (noting that the plaintiff must file an action on the judgment and "is therefore subject to the same rules for pleading and trial . . . . And, in contrast to the ex parte grant of a judgment under [the EFJA], . . . a trial is required [in an ordinary proceeding.]").

31. Louisiana is often considered a "mixed jurisdiction"—a term that attempts to describe civilian legal tradition roots overlaid with common law tradition attributes. Mary Garvey Algero, *The Sources of Law and the Value of Precedent: A Comparative and Empirical Study of a Civil Law State in a Common Law Nation*, 65 LA. L. REV. 775, 780 (2005).

32. LA. CIV. CODE art. 1 (2017).

33. *See, e.g.*, Doerr v. Mobile Oil Corp., 774 So. 2d 119, 129 (La. 2000).

Uncertainties following *Baker* may lead to unpredictability burdening Louisiana claimants.[34]

Louisiana needs a statute that governs the recognition of foreign judgments and clarifies the enforcement procedure and its limitations. Louisiana's EFJA, besides being prone to causing confusion,[35] is too narrow to serve both as a recognition standard and an enforcement procedure.[36]

Part I of this Comment presents the background of foreign judgment recognition law, sketches its transition from a federal to a state concern, and demonstrates diverging state practices causing predictability's demise. Part II discusses the major Louisiana court decisions and legislation regarding foreign judgments. Part III surveys and analyzes constitutional challenges a proposed statute may face, drawing from the Uniform Law Commission and the Restatement (Third) of Foreign Relations. Part IV concludes with a proposed statute and argues that Louisiana must codify its recognition standard to enable clear enforcement procedure for foreign judgments recognized by sister states.

I. DEVELOPING A RECOGNITION FRAMEWORK: FRANKENSTEIN'S MONSTER OF PIECEMEAL STATE LAW

The recognition of a foreign judgment and its subsequent enforcement are two distinct topics.[37] Recognition refers to a court in the United States accepting a foreign court's determination of the parties' legal rights and

34. An uncertainty, for example, is whether the *Baker* decision is limited to foreign judgments in the recognition stage or if it also bars a plaintiff's use of the EFJA to enforce a foreign judgment subsequently recognized by a sister state. Neither the legislative comments nor *Baker* answer this question.

35. *Baker*, 20 So. 3d at 1119 (recognizing "that a reading of Article 2541 may give the impression" that the EFJA is applicable when it is not).

36. The Uniform Law Commission did not intend that the EFJA serve both purposes. The EFJA establishes a procedure for enforcement; the Recognition Acts establish standards for recognition. REVISED UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT, Prefatory Note (UNIF. LAW COMM'N 1964); UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT (UNIF. LAW COMM'N 1962); UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (UNIF. LAW COMM'N 2005).

37. The discussion of "foreign judgments" in this Comment refers exclusively to foreign-country judgments, not a judgment of one state in the United States being enforced in another. Judgments of the latter sort will be called "sister-state judgments." *See* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 481 cmt. b (AM. LAW INST. 1987).

obligations.[38] Once recognized, the judgment has the same credit and effect as any other judgment the court issues.[39] Enforcement, however, refers to a separate action that the judgment creditor utilizes to execute the recognized judgment.[40] A judgment creditor can collect on the recognized judgment in an enforcement proceeding just like any other judgment by the court.[41]

A. The Origins of Comity

In the United States, states must recognize and enforce sister-state judgments because of their dual obligations in the federalism structure—an obligation to the United States *and* to the several states.[42] A state court, however, does not share that bond with foreign countries. Because the United States is not a member of any international body in the same way that individual states are members of the United States, federal courts are not obligated to recognize foreign judgments under an international equivalent to the Full Faith and Credit Clause.[43] Nevertheless, federal and state courts have recognized foreign judgments under the principle of comity since the seminal case of *Hilton v. Guyot* in 1895.[44]

Comity is the practice of giving a foreign nation's laws and judicial acts effect beyond the territorial boundaries of the foreign nation.[45] In *Hilton*, the Supreme Court established that the principles of comity and international duty may require U.S. courts to recognize and give effect to foreign judgments.[46] *Hilton* involved two American defendants entangled

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38. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4 cmt. 2.

39. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 481 cmt. c.

40. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4 cmt. 2.

41. *Id*. at § 7 cmt. 3. Recognition is a condition precedent to enforcement. *Id*. at § 4 cmt. 2 ("Because the forum court cannot enforce the foreign-country judgment until it has determined that the judgment will be given effect, recognition is a prerequisite to enforcement of the foreign-country judgment.").

42. U.S. CONST. art. IV, § 1, cl. 1.

43. *See, e.g.*, Arthur T. von Mehren & Donald T. Trautman, *Recognition of Foreign Adjudications: A Survey and a Suggested Approach*, 81 HARV. L. REV. 1601 (1968); Courtland H. Peterson, *Foreign Country Judgments and the Second Restatement of Conflict of Laws*, *in* RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS 138 (Linda J. Silberman & Franco Ferrari eds., 2017).

44. Hilton v. Guyot, 159 U.S. 113 (1895).

45. *Comity*, BLACK'S LAW DICTIONARY (10th ed. 2014).

46. *Hilton*, 159 U.S. 113.

in a contractual dispute with Guyot, a French national.[47] Guyot successfully sued the defendants in France and was again successful on appeal.[48] But before Guyot collected on the judgment, the defendants divested all of their property interests in France and returned to New York.[49] Guyot quickly brought suit in New York to collect on the French judgments, and the dispute eventually came before the Supreme Court of the United States.[50]

Justice Gray, writing for the majority in *Hilton*, first noted the general rule that although national law lacks inherent extraterritorial effect, individual nations may allow foreign laws and judicial acts to operate extraterritorially under the principles of comity.[51] Comity, in turn, is "neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation."[52] After meticulously surveying foreign judgment recognition law from around the world,[53] Justice Gray crafted the legal standard for recognizing foreign judgments in the United States that continues to form the backbone of foreign judgment laws on comity.[54]

Under the *Hilton* factors, a court ought to extend comity if the foreign proceeding: (1) provided an opportunity for a full and fair trial; (2) was before a court of competent jurisdiction; (3) gave proper notice to the defendant; (4) was in a system of jurisprudence likely to secure the impartial administration of justice; (5) lacked prejudice in the court and applicable law; and (6) was devoid of fraud in procuring the judgment.[55] At the end of the opinion, Justice Gray added one factor that bars comity's application: reciprocity.[56]

Through the principle of reciprocity, a court recognizes and gives effect to a foreign court's judgment only if that foreign court similarly

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47. *Id*. at 114.
48. *Id*. at 115.
49. *Id*. at 115–16.
50. *Id*. at 113.
51. *Id*. at 163.
52. *Id*. at 163–64.
53. Justice Gray's opinion in *Hilton* spans over 116 pages and has been called "the most detailed exposition by any American court of the principles governing the extraterritorial recognition and enforcement of judgments rendered in foreign nations." Willis L.M. Reese, *The Status in this Country of Judgments Rendered Abroad*, 50 COLUM. L. REV. 783, 790 (1950).
54. *Hilton*, 159 U.S. at 163–66.
55. *Id*. at 202.
56. *Id*. at 202.

recognizes the first court's judgments.[57] Although the facts in *Hilton* satisfied the enumerated factors, suggesting the propriety of applying comity,[58] Justice Gray ultimately denied recognizing Guyot's French judgment for want of reciprocity.[59] Because a French court would not recognize a U.S. judgment, the United States Supreme Court would not recognize Guyot's French judgment.[60]

B. Recognition and Enforcement as a State Responsibility

Hilton's unambiguous statement that the principle of comity arises from an international duty[61] clarified that foreign judgment recognition was a matter of federal rather than state concern.[62] As a federal concern, state and federal courts applied international law instead of state law and looked to the Supreme Court for guidance.[63] The Supreme Court, however, has not reviewed a foreign judgment recognition case since *Hilton* in 1895.[64] Without subsequent guidance, the nuances of *Hilton*'s underdeveloped factors remained unclear.[65]

The lack of Supreme Court guidance and federal legislation[66] helped pave the way for state law to displace federal law in foreign judgment

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57. *Id*. at 205.

58. *Id*. at 202–03.

59. *Id*. at 209–28.

60. *Id*. at 227. Because international law had already recognized *Hilton*'s reciprocity requirement, *id.* at 228, it is unclear whether Justice Gray intended states to be bound by the reciprocity rule as well. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 cmt. e (AM. LAW INST. 1988) ("The *Hilton* case involved an appeal from a lower federal court, and the opinion did not discuss whether the rule it announced as to reciprocity would be binding on State courts.").

61. *Hilton*, 159 U.S. at 163–64.

62. Melinda Luthin, *U.S. Enforcement of Foreign Money Judgments and the Need for Reform*, 14 U.C. DAVIS J. INT'L L. & POL'Y 111, 116 (2007).

63. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS: ANALYSIS AND PROPOSED FEDERAL STATUTE, Introduction (AM. LAW INST. 2006).

64. Linda J. Silberman, *The Need for a Federal Statutory Approach to the Recognition and Enforcement of Foreign Country Judgments*, *in* 26TH SOKOL COLLOQUIUM, FOREIGN COURT JUDGMENTS AND THE UNITED STATES LEGAL SYSTEM 101, 102 (Paul B. Stephan ed., 2013) (stating that *Hilton* was "[t]he only Supreme Court case dealing with the recognition and enforcement of foreign country judgments.").

65. Luthin, *supra* note 62, at 116.

66. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 481 cmt. g (AM. LAW INST. 1987); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 (AM. LAW INST. 1988). *Cf.* Although Congress has not passed any laws on the

enforcement.[67] Justice Fuller's dissent in *Hilton* served as the primary rationale for rejecting federal law in favor of state law.[68] Justice Fuller disagreed with the majority's view that international law should govern the enforcement of foreign judgments.[69] Instead, Justice Fuller viewed foreign judgments as private rights that should be enforced by the ordinary and simple doctrine of res judicata,[70] resting on the public policy ground that there must be an end to litigation.[71] In adopting a private rights view of foreign judgment enforcement, Justice Fuller noted: "Now, the rule is universal in this country that private rights acquired under the laws of foreign states will be respected and enforced in our courts unless contrary to the policy or prejudicial to the interests of the state where this is sought to be done[.]"[72] The private rights and res judicata framework that Justice Fuller espoused existed quietly for over 30 years before New York's highest state court adopted it.[73]

In 1926, the New York Court of Appeals adopted Justice Fuller's dissent in *Johnston v. Compagnie Generale Transatlantique*.[74] As Justice Fuller did in *Hilton*, the New York court framed foreign judgment enforcement as a private right.[75] Framing the issue as a private right allowed the *Johnston* court to use New York common law rather than international law as required by *Hilton*.[76] By distinguishing *Hilton*,[77] the

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general recognition of foreign judgments, Congress has enacted specific legislation related to foreign libel judgments. Securing the Protection of Our Enduring and Established Constitutional Heritage Act, Pub. L. No. 111–223, 124 Stat. 2480 (codified at 28 U.S.C. §§ 4801–05 (2012)).

67. Luthin, *supra* note 62, at 116.

68. *See* Johnston v. Compagnie Generale Transatlantique, 152 N.E. 121, 123 (N.Y. 1926).

69. Hilton v. Guyot, 159 U.S. 113, 233 (1895) (Fuller, J., dissenting).

70. *Res judicata*, literally "a thing adjudged," refers to an issue that has been definitively settled between parties by a court, where the finality of the suit bars relitigating the claim. *See Res Judicata*, BLACK'S LAW DICTIONARY (10th ed. 2014).

71. *Hilton*, 159 U.S. at 229 (Fuller, J., dissenting).

72. *Id.* at 233 (Fuller, J., dissenting).

73. *Johnston*, 152 N.E. 121.

74. *Id*.

75. *Id.*

76. *Id.* at 123.

77. The *Johnston* court reached "the conclusion that this court is not bound to follow the Hilton Case" by limiting *Hilton*'s scope "to the questions actually decided." *Id.* The court dismissed "the preceding 54 pages of the opinion . . . as magnificent dictum, entitled to the utmost respect, but not determinative of the question." *Id.*

New York Court of Appeals signaled to other state courts the availability of an alternative foreign judgment enforcement to *Hilton*.[78]

Federal courts quickly recognized the primacy of state law in foreign judgment recognition as well. In 1926, the Supreme Court in *Erie Railroad Co. v. Tompkins*[79] rejected its past holdings based on natural law,[80] finding it unconstitutional to create federal general common law.[81] Thus, federal courts sitting in diversity jurisdiction had to look to the substantive law that the state court would use.[82] Furthermore, the Supreme Court has

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78. *See, e.g.*, Tonga Air Servs., Ltd. v. Fowler, 826 P.2d 204, 208 (Wash. 1992) (rejecting *Hilton* in foreign judgment enforcement); Nicol v. Tanner, 256 N.W.2d 796, 801 (Minn. 1976) (declining to adopt the doctrine of *Hilton*).

79. Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).

80. The positivism movement is most eloquently phrased by a dissenting Justice Holmes:

> It is very hard to resist the impression that there is one august corpus, to understand which clearly is the only task of any Court concerned. If there were such a transcendental body of law outside of any particular State but obligatory within it unless and until changed by statute, the Courts of the United States might be right in using their independent judgment as to what it was. But there is no such body of law. The fallacy and illusion that I think exist consist in supposing that there is this outside thing to be found. Law is a word used with different meanings, but law in the sense in which courts speak of it today does not exist without some definite authority behind it. The common law so far as it is enforced in a State, whether called common law or not, is not the common law generally but the law of that State existing by the authority of that State without regard to what it may have been in England or anywhere else.

Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co., 276 U.S. 518, 533–34 (1928) (Holmes, J., dissenting).

81. *Erie* did not abolish common law as a whole; rather, it rejected federal general common law that purported to impose substantive law on the states when the federal government lacked the constitutional authority *and* where the area was outside the federal government's competence. On the latter point, federal courts will not look to state law where there is a federal interest, such as when the Act of State doctrine is implicated. *See, e.g.*, Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964) (applying the Act of State doctrine as a matter of federal common law). Brand, *supra* note 7, at 287.

82. Federal courts deciding foreign judgment enforcement disputes are likely to be in diversity jurisdiction because the suits typically involve at least one foreign party, making *Erie* particularly pivotal for foreign judgment recognition. *See* 28 U.S.C. § 1332(a)(1)–(4) (2012). *See, e.g.*, Somportex, Ltd. v. Phila. Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971) ("[B]ecause our jurisdiction is based solely on diversity, 'the law to be applied . . . is the law of the state.'").

refrained from reviewing the state rules, clarifying that the recognition and enforcement of foreign judgments does not present a federal question.[83] Although *Erie* does not foreclose all opportunity to apply federal law, its application solidifies that foreign judgment recognition is primarily within the province of the states.[84]

C. Uniform Acts for Foreign Judgment Recognition and Enforcement

The aftermath of *Hilton* left the states to independently enact laws for the recognition and enforcement of foreign judgments.[85] Although *Hilton* marked the genesis of U.S. foreign judgment law, provoking fundamental similarities among the varying state laws,[86] the fact that each state developed its own set of laws governing foreign judgments unsurprisingly created inconsistencies.[87]

When differences among state court decisions arise, the Supreme Court generally cannot review the decisions.[88] This lack of a central reviewing body perpetuates differences among the states and frustrates predictability.[89] The states' uses of varying sources of law also decreases uniformity. For example, some state courts continue to cite *Hilton* in

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83. *See* Aetna Life Ins. Co. v. Tremblay, 223 U.S. 185 (1912); *see also infra* text accompanying note 88.

84. Silberman, *supra* note 64, at 102 ("[S]tate common law appeared to govern the question of whether a foreign country judgment was entitled to recognition and enforcement both in state and federal courts.").

85. Luthin, *supra* note 62, at 117–18.

86. *See generally* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW §§ 481–82 (AM. LAW INST. 1987).

87. Luthin, *supra* note 62, at 118–19.

88. Aetna Life Ins. Co. v. Tremblay, 223 U.S. 185 (1912) (holding that the Court lacked jurisdiction to review a state court decision on foreign judgment recognition because it did not implicate any right protected by the Constitution); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 481 cmt. a ("Ordinarily, a decision of a State court granting or denying recognition to a foreign judgment is not subject to review by the United States Supreme Court, unless the decision raises questions under the United States Constitution, for example, intrusion into the foreign affairs of the United States.").

89. *Compare* Reading & Bates Constr. Co. v. Baker Energy Res. Corp., 976 S.W.2d 702 (Tex. Ct. App. 1998) (refusing to enforce a Louisiana court's recognition of a judgment rendered abroad), *with* Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros. Co., 99 A.3d 936 (Pa. Super. Ct. 2014) (holding that foreign judgments recognized in state courts are sister-state judgments for purposes of enforcement).

foreign judgment cases without mentioning any Restatements.[90] Other states claim to follow the Restatement of Conflict of Laws,[91] the Restatement of Foreign Relations,[92] both Restatements, or even a combination of *Hilton* and both Restatements.[93]

The diverging state practices led the Uniform Law Commission to promulgate the Uniform Foreign Money-Judgments Recognition Act in 1962 ("1962 Recognition Act").[94] The 1962 Recognition Act established a uniform statute prescribing requirements for recognition,[95] mandatory grounds for non-recognition,[96] and discretionary grounds for non-recognition.[97] The ULC did not intend for the 1962 Recognition Act to be a radical departure from then-existing state law.[98] Instead, the ULC hoped to increase the likelihood of foreign courts recognizing a judgment from the United States by demonstrating reciprocal treatment.[99] Beyond reciprocity, adopting the 1962 Recognition Act helped unify statutory language among states.[100] Section 8 of the 1962 Act promotes uniformity by requiring adopting states to interpret the Act "as to effectuate its general purpose to make uniform the law of those states which enact it."[101] Although the 1962 Recognition Act did not prescribe a uniform enforcement procedure,[102] it provided that foreign judgments entitled to recognition are "enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit."[103]

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90. *See*, *e.g.*, Kwongyuen Hangkee Co. v. Starr Fireworks, Inc., 634 N.W.2d 95 (2001).

91. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 (AM. LAW INST. 1988).

92. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW §§ 481–82; *see, e.g.*, Alberta Sec. Comm'n v. Ryckman, 30 P.3d 121 (Ariz. Ct. App. 2001).

93. *See In re* Hashim, 213 F.3d 1169 (9th Cir. 2000).

94. UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT (UNIF. LAW COMM'N 1962).

95. *Id.* at §§ 1(2), 2.

96. *Id.* at § 4(a)(1)–(3).

97. *Id.* at § 4(b)(1)–(6).

98. *Id.* at Prefatory Note ("The Act states rules that have long been applied by the majority of courts in this country.").

99. *Id.* The 1962 Recognition Act would satisfy the reciprocity requirement still existing in a large number of civil law countries. *Id*.

100. Hilton v. Guyot, 159 U.S. 113, 163 (1895) ("The most certain guide, no doubt, for the decision of such questions is a treaty or a statute of this country.").

101. UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 8.

102. *Id.* at Prefatory Note.

103. *Id.* at § 3.

Two years later, the ULC published the 1964 Uniform Enforcement of Foreign Judgments Act ("EFJA")[104] to codify the United States Constitution's Full Faith and Credit Clause.[105] The Constitution requires that state courts give a judgment from a sister state the "same credit, validity, and effect . . . that it has in the state where it is pronounced."[106] The EFJA provides a speedy and economical registration method for holders of judgments entitled to full faith and credit.[107]

In 2005, the ULC promulgated the Uniform Foreign-Country Money Judgments Recognition Act ("2005 Recognition Act") as a revision to the 1962 Recognition Act.[108] Like its predecessor, the 2005 Recognition Act codified the then-existing law and did not present a radical change.[109] The revision: (1) updated the definitions section; (2) allocated the burden of proof; (3) established a procedure for recognition pursuant to the revision; (4) clarified the grounds for denying recognition for provisions with differing interpretations in case law; and (5) established a statute of limitations for recognition actions under the revision.[110]

The majority of states have enacted the 1962 or 2005 Recognition Act, as well as the 1964 EFJA.[111] Collectively, these uniform statutes help foster consistency in state foreign judgment recognition and enforcement practice.[112] But because individual states ultimately determine their recognition standards, the law remains unsettled and state-specific.

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104. REVISED UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT (UNIF. LAW COMM'N 1964). The 1964 version is a revision of the original 1948 version. *See generally* UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT (UNIF. LAW COMM'N 1948).

105. U.S. CONST. art. IV, § 1, cl. 1.

106. Schultz v. Doyle, 776 So. 2d 1158, 1164 (La. 2001). *See* U.S. CONST. art. IV, § 1; Milwaukee Cty. v. M.E. White Co., 296 U.S. 268, 276–77 (1935) (stating that the Full Faith and Credit Clause was an important tool in unifying the nation by requiring states to accept another state's judgment "as of right, irrespective of the state of its origin"); Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 373 (1996) (directing state courts to "treat a state court judgment with the same respect that it would receive in the courts of the rendering State.").

107. REVISED UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT.

108. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (UNIF. LAW COMM'N 2005).

109. *Id.* at Prefatory Note.

110. *Id.*

111. *Foreign-Country Money Judgments Recognition Act*, *supra* note 21; *Foreign Money-Judgments Recognition Act*, *supra* note 21.

112. *See, e.g.*, UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 8 (UNIF. LAW COMM'N 1962).

II. THE ENFORCEABILITY OF FOREIGN JUDGMENTS IN LOUISIANA

Although the majority of states have adopted either the 1962 or 2005 version of the Recognition Act, Louisiana has not.[113] Instead, Louisiana has adopted only the EFJA.[114]

Prior to 2016, Louisiana Code of Civil Procedure article 2541 seemingly provided two procedures to make foreign judgments executory in Louisiana courts.[115] First, the article provided for enforcement by "ordinary proceeding," which required the judgment creditor to file a lawsuit to obtain recognition of the out-of-state judgment.[116] As its name suggests, the "ordinary proceeding" is the default rule and was commonly used prior to adopting the EFJA.[117] Second, article 2541 stated that a judgment creditor seeking enforcement "of a judgment . . . of a court of the United States . . . , or of any other state, or of any foreign country may either seek enforcement pursuant to [Louisiana's EFJA] or bring an ordinary proceeding."[118] The article, whether intentionally or inadvertently, did not distinguish between sister-state judgments and foreign judgments.[119] This confusion resulted in a circuit split between two Louisiana courts of appeal in applying the EFJA.

A. Louisiana Circuit Split

Both the Louisiana First and Fifth Circuit Courts of Appeal have considered whether the EFJA can be used to enforce a foreign judgment.[120] In *Rouffanche v. D'Spain*, the Louisiana Fifth Circuit considered the applicability of the EFJA to foreign judgment enforcement.[121] At the district court level, the court ordered a French judgment enforceable by

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113. *See supra* text accompanying note 111.

114. Act No. 464, 1985 La. Acts 882 (codified at LA. REV. STAT. §§ 13:4241–47 (1985)).

115. LA. CODE CIV. PROC. art. 2541 (2012).

116. *Id.* art. 2541(A).

117. REVISED UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT, Prefatory Note (UNIF. LAW COMM'N 1964).

118. LA. CODE CIV. PROC. art. 2541(A) (2011).

119. Henry McMahon, *The Louisiana Code of Civil Procedure*, 21 LA. L. REV. 1, 39 (1960) ("A single article in the new code provides the procedure for the enforcement in Louisiana of a judgment of a court of another state or foreign country.")

120. Rouffanche v. D'Spain, 506 So. 2d 218 (La. Ct. App. 5th Cir. 1987); Baker & McKenzie Advokatbyra v. Thinkstream Inc., 20 So. 3d 1109 (La. Ct. App. 1st Cir. 2009).

121. *Rouffanche*, 506 So. 2d 218.

either ordinary action *or* the EFJA, seemingly at the option of the judgment creditor.[122] On appeal, the Fifth Circuit agreed with the district court that a "creditor with a foreign judgment can proceed against a debtor in Louisiana by ordinary action" *or* by the EFJA.[123] Ultimately, however, the *Rouffanche* court refused to enforce the judgment after finding that the judgment creditor had failed to comply with notice requirements under both the ordinary action and the EFJA.[124] Although the *Rouffanche* court denied enforcement, it only did so for lack of adequate notice; thus, the *Rouffanche* court's opinion suggests that both the EFJA and the ordinary procedure can be used to enforce a foreign judgment.[125]

The Louisiana First Circuit Court of Appeal held otherwise.[126] In *Baker & McKenzie Advokatbyra v. Thinkstream*, the First Circuit held that the EFJA is categorically unavailable to enforce foreign judgments.[127] The EFJA allows enforcement of "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state."[128] Finding that foreign judgments are not entitled to full faith and credit, the First Circuit held that the judgment creditors in *Baker* could not enforce a foreign judgment through the EFJA.[129]

The *Rouffanche* and *Baker* courts had different interpretations of the EFJA's applicability to foreign judgments. The difference hinges on full faith and credit's application—specifically, whether the EFJA allows enforcement of "any judgment," as the *Rouffanche* court found, or whether the judgment must also be from a "court which is entitled to full faith and credit in this state." Although the EFJA includes words limiting its scope to judgments entitled to full faith and credit,[130] article 2542's disjunctive

122. *Id*. at 219.
123. *Id*.
124. *Id*.
125. *Id*.
126. Baker & McKenzie Advokatbyra v. Thinkstream Inc., 20 So. 3d 1109, 1118 (La. Ct. App. 1st Cir. 2009).
127. *Id*.
128. LA. REV. STAT. § 13:4241 (2011).
129. *Baker*, 20 So. 3d at 1111.
130. Louisiana's EFJA defines a "foreign judgment" as another court's judgment that "is entitled to full faith and credit in this state." LA. REV. STAT. § 13:4241.

"or" did not include such a limitation,[131] thereby suggesting that full faith and credit is not required.[132]

B. Statutory Interpretation

The *Baker* and *Rouffanche* courts, having considered the same EFJA statutory language and Code of Civil Procedure article 2541, came to opposite conclusions on whether the EFJA is an appropriate procedural mechanism to enforce a foreign judgment.[133] Article 2541 does not limit the EFJA's applicability to judgments entitled to full faith and credit.[134] Article 2541, at the time of *Baker* and *Rouffanche*, provided:

> A. A party seeking recognition or execution by a Louisiana court of a judgment or decree of a court of the United States or a territory thereof, or of any other state, or of any foreign country may either seek enforcement pursuant to [Louisiana's EFJA] or bring an ordinary proceeding against the judgment debtor in the proper Louisiana court, to have the judgment or decree recognized and made the judgment of the Louisiana court.
>
> B. In the latter case, a duly authenticated copy of the judgment or decree must be annexed to the petition.[135]

The plain language of the article suggests that a foreign judgment can be enforced—at the plaintiff's choice—through *either* an ordinary proceeding *or* the EFJA. Indeed, even the Editor's Notes in the Code of Civil Procedure implicitly suggest that the Louisiana Legislature intended no difference between the judgments of the United States and those of foreign countries, insofar as article 2541 is concerned.[136] Without distinguishing between sister-state and foreign-country judgments, the

131. Article 2541 allowed Louisiana courts to enforce a judgment from "a court of the United States . . . , *or* of any other state, *or* of any foreign country . . . pursuant to [Louisiana's EFJA]." LA. CODE CIV. PROC. art. 2541 (2011) (emphasis added).

132. *Compare* LA. CODE CIV. PROC. art. 2541 (allowing foreign judgment enforcement without mention of full faith and credit), *with* LA. REV. STAT. § 13:4241 (limiting the EFJA to enforcement of foreign judgments entitled to full faith and credit).

133. *Compare* Rouffanche v. D'Spain, 506 So. 2d 218 (La. Ct. App. 5th Cir. 1987), *with Baker*, 20 So. 3d 1109.

134. LA. CODE CIV. PROC. art. 2541.

135. *Id.*

136. *Id.*, Editor's Notes.

Editor's Notes to article 2541 read: "For alternative method of enforcing foreign judgments, see [Louisiana's EFJA]."[137] The EFJA, then, seems to be a general alternative to ordinary proceedings.

Unlike the EFJA, article 2541 does not contain a prefatory note tracing its scope and purpose.[138] To understand the intended limitations of article 2541,[139] the *Baker* court discerned the legislative intent by examining the 1985 amendment to article 2541.[140] Specifically, the *Baker* court focused on the article's change from mandatory to permissive language.[141] Prior to the EFJA, article 2541 required plaintiffs to use article 2541 to make a judgment enforceable.[142] The 1985 amendment replaced the article's mandate and instead made ordinary proceedings optional and the EFJA an alternative.[143]

But article 2541's change from mandatory to permissive language is not as telling as it may seem. As the *Baker* court noted, the 1985 amendments to article 2541 were made in connection with the enactment of Louisiana's EFJA.[144] If the legislature did not change the then-mandatory language of article 2541, the article would have been in direct conflict with the newly enacted EFJA.[145] Under the old language, a party seeking enforcement of a foreign judgment in Louisiana "must bring an ordinary proceeding."[146] The legislative intent in adopting permissive language may have been to allow use of the newly enacted EFJA while addressing the most obvious conflict, thus necessitating permissive language in article 2541. Despite this distinction, article 2541 does not, on its own, limit its applicability to judgments entitled to full faith and credit.

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137. *Id*.

138. *See* REVISED UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT, Prefatory Note (UNIF. LAW COMM'N 1964).

139. The legislative intent is important to understanding the relationship between article 2541 and the EFJA because the "legislature is presumed to have acted with deliberation and to have enacted a statute in light of the preceding statutes involving the same subject matter." La. Mun. Ass'n v. State, 893 So. 2d 809, 837 (La. 2005).

140. Baker & McKenzie Advokatbyra v. Thinkstream Inc., 20 So. 3d 1109, 1118–20 (La. Ct. App. 1st Cir. 2009).

141. *Id*.

142. LA. CODE CIV. PROC. art. 2541 (1985).

143. *Compare* LA. CODE CIV. PROC. art. 2541 (2011), *with* LA. CODE CIV. PROC. art. 2541 (1985).

144. *Baker*, 20 So. 3d at 1119 ("It is of interest that the same legislative act that promulgated [the EFJA] also amended [article] 2541.").

145. *Compare* LA. CODE CIV. PROC. art. 2541 (2011), *with* LA. CODE CIV. PROC. art. 2541 (1985).

146. LA. CODE CIV. PROC. art. 2541 (1985).

The EFJA, however, does not apply to foreign judgments by its own terms[147] because it is limited to judgments "entitled to full faith and credit," of which foreign judgments are not.[148] This conclusion creates conflict. Article 2541 suggests that the ordinary proceeding and EFJA are equally available alternatives, but the EFJA alternative is limited to judgments entitled to full faith and credit.[149]

Furthermore, Louisiana Civil Code article 13 requires that "[l]aws on the same subject matter . . . be interpreted in reference to each other."[150] Code of Civil Procedure article 5051 has a similar mandate for civil procedure articles.[151] Specifically, article 5051 requires a liberal construction[152] of Code of Civil Procedure articles, recognizing "that rules of procedure implement the substantive law and are not an end in themselves."[153] Together, the Civil Code and Code of Civil Procedure articles suggest a need for reconciling the EFJA and Code of Civil Procedure article 2541.[154]

A maxim of statutory interpretation is that special provisions derogate from general provisions. Specifically, under the maxim of *lex specialis*, general laws give way to special laws. Louisiana Code of Civil Procedure article 2541, as a rule of general applicability, should not encroach on the explicit limitation imposed by the EFJA, the specific statute applying to foreign judgment enforcement.[155] Despite the apparent language of article 2541, the EFJA is not merely an alternative means of enforcement freely

147. *See* Act No. 464, 1985 La. Acts 882 (codified at LA. REV. STAT. §§ 13:4241–47 (2016)).

148. *Baker*, 20 So. 3d at 1118–20 ("While the Full Faith and Credit Clause applies to the recognition and enforcement of judgments among *sister states*, it does not apply to judgments rendered in *foreign countries*.").

149. LA. REV. STAT. § 13:4241 (2016).

150. LA. CIV. CODE art. 13 (2016).

151. LA. CODE CIV. PROC. art. 5051 (2017).

152. *Id.* ("The articles of this Code are to be *construed liberally*, and with due regard for the fact that rules of procedure implement the substantive law and are not an end in themselves.") (emphasis added).

153. *Id.*

154. LA. CIV. CODE art. 13; LA. CODE CIV. PROC. art. 5051.

155. Medine v. Roniger, 879 So. 2d 706, 714 (La. 2004). This argument is also supported by the Louisiana Code of Civil Procedure's rules of construction. Article 5051, titled "Liberal construction of articles," states that the procedural rules "implement the substantive law" and that they "are not an end in themselves." LA. CODE CIV. PROC. art. 5051; *see also supra* text accompanying notes 150–154.

available to the judgment creditor, and the EFJA does not apply to foreign judgments.[156]

III. KEY ISSUES IN STATUTORY FOREIGN JUDGMENT AND ENFORCEMENT LAW

Louisiana's attempt in balancing its EFJA with the requirements of the Full Faith and Credit Clause illustrates a common problem for states.[157] The Full Faith and Credit Clause imposes a constitutional duty on state courts to enforce the judicial proceedings of every other state.[158] Not all states, however, agree on the scope of this duty.[159]

A. Full Faith and Credit

The Full Faith and Credit Clause clearly requires states to recognize and enforce judgments rendered in other states[160] but not foreign judgments.[161] There is no definitive answer, however, to whether a foreign judgment, once recognized by a state court, can be enforced in a separate state court under the Full Faith and Credit Clause.[162] This type of judgment will be referred to as a "sister-recognized judgment."

On the one hand, refusing to enforce a sister-recognized judgment can be viewed as violating the Full Faith and Credit Clause.[163] When a sister state recognizes the foreign judgment, the judgment becomes a state court judgment and is entitled to full faith and credit in all other states.[164] On the other hand, allowing enforcement of sister-recognized judgments through

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156. Baker & McKenzie Advokatbyra v. Thinkstream Inc., 20 So. 3d 1109, 1118–20 (La. Ct. App. 1st Cir. 2009).

157. *See, e.g.*, Ahmad Hamad Al Gosaibi & Bros. Co. v. Standard Chartered Bank, 98 A.3d 998, 1005 (D.C. 2014).

158. U.S. CONST. art. IV § 1, cl. 1.

159. *Compare Ahmad Hamad Al Gosaibi*, 98 A.3d at 1005, *with* Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros. Co., 99 A.3d 936 (Pa. Super. Ct. 2014).

160. *See, e.g.*, Milwaukee Cty. v. M.E. White Co., 296 U.S. 268, 276–77 (1935).

161. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 cmt. d (AM. LAW INST. 1988).

162. *Compare Ahmad Hamad Al Gosaibi*, 98 A.3d at 1005, *with Standard Chartered Bank*, 99 A.3d at 936. Although these two cases involve the same New York recognition judgment, the D.C. and Pennsylvania courts disagreed on whether the New York judgment was entitled to enforcement under the Full Faith and Credit Clause.

163. *Standard Chartered Bank*, 99 A.3d at 939.

164. *Id*.

the Full Faith and Credit Clause might impede a state's ability to maintain a strict recognition law policy.[165] The judgment creditor could exploit the Full Faith and Credit Clause to enforce a judgment in a state with strict recognition laws by first obtaining recognition in a more lenient state.[166] The principal question, then, turns on whether a court considers the foreign-rendered judgment to retain its original identity despite sister-recognition, or if it becomes a state judgment once recognized, displacing its foreign identity entirely.

In *Reading & Bates Construction Co. v. Baker Energy Resources Corp.*, a Texas court of appeals held that a foreign judgment remains a foreign judgment, despite sister-recognition.[167] In *Reading & Bates*, a Canadian patent holder obtained a favorable judgment in Canada and, after the judgment was final,[168] sought recognition of the judgment in Louisiana.[169] After Louisiana recognized the judgment,[170] the plaintiff attempted to enforce the judgment in Texas through Texas's EFJA.[171] The plaintiff argued that Louisiana's recognition of the Canadian judgment effectively transformed the Canadian judgment into a Louisiana judgment, giving it full faith and credit.[172] After noting that the United States Supreme Court has refused to make full faith and credit an "iron-clad rule,"[173] the Texas court of appeals rejected the plaintiff's argument and held that a foreign judgment can only be enforced in the state where it was recognized.[174]

Although the Full Faith and Credit Clause is not iron-clad,[175] the United States Supreme Court has noted that the Court alone defines the

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165. Williams v. North Carolina, 317 U.S. 287, 302 (1942).

166. *Ahmad Hamad Al Gosaibi*, 98 A.3d at 1006–07.

167. *See* Reading & Bates Constr. Co. v. Baker Energy Res. Corp., 976 S.W.2d 702 (Tex. App. 1998) (refusing to enforce a Louisiana court's recognition of a judgment rendered abroad).

168. *Id*. at 705 ("The Canadian judgment became final when the Supreme Court of Canada denied Baker Energy's application for leave on June 1, 1995.").

169. *Id*.

170. *Id*.

171. *Id*. Texas's EFJA is substantially similar to Louisiana's. *Compare* TEX. CIV. PRAC. & REM. CODE ANN. § 35.003 (West 1997), *with* LA. REV. STAT. §§ 13:4241–47 (2016).

172. *Reading & Bates*, 976 S.W.2d at 712.

173. *Id.* at 713 (citing Milwaukee Cty. v. M.E. White Co., 296 U.S. 268, 273 (1935)).

174. *Id*. at 714.

175. The *Reading & Bates* court noted that the Supreme Court has not made full faith and credit an "iron-clad rule." *Id*. at 713 (citing Milwaukee Cty. v. M.E. White Co., 296 U.S. 268, 273 (1935)).

scope of the Full Faith and Credit Clause exceptions.[176] Additionally, the Court has stated that it is unaware of any such exception to money judgments rendered in civil suits.[177]

Building off of the Supreme Court, a Pennsylvania court concluded that Pennsylvania courts have a duty under Full Faith and Credit Clause to enforce sister-recognized judgments to the same extent as any other sister-state judgments.[178] Thus, like sister-state judgments,[179] neither state public policy nor differences in law can bar the enforceability of sister-recognized judgments.[180] Under Pennsylvania law, a state court's recognition of a foreign judgment effectively converts the foreign judgment into a sister-state judgment.[181] Before an enforcing court decides what deference to give sister-recognized judgments, however, the recognizing court must address what standard it will use to determine whether a foreign judgment is entitled to recognition at all.[182]

B. Bases for Recognition in the Recognition Acts and the Restatement

The primary sources for state recognition laws are the 1962 and 2005 Recognition Acts and common law, the general trend of which is expressed in the Restatement (Third) of Foreign Relations ("Restatement").[183] Both

176. Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 438 (1943) ("[T]his Court is the final arbiter of the extent of the exceptions.").

177. *Id.* at 438 ("We are aware of no such exception in the case of a money judgment rendered in a civil suit.").

178. Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros. Co., 99 A.3d 936 (Pa. Super. Ct. 2014).

179. Greate Bay Hotel & Casino, Inc. v. Saltzman, 609 A.2d 817, 820 (Pa. Super. Ct. 1992) ("'A state is required to give full faith and credit to a money judgment rendered in a civil suit by a sister state even where the judgment violates the policy or law of the forum where enforcement is sought.' If the judgment was valid and enforceable in the rendering state, '[it] is equally so in all other states.'") (quoting Everson v. Everson, 431 A.2d 889, 896 (1981)).

180. *Standard Chartered Bank*, 99 A.3d 936.

181. *Id*. To be clear, Pennsylvania is not giving full faith and credit to the foreign judgment—the court is giving full faith and credit to the sister-state judgment that recognized the foreign judgment. *Id*. at 943.

182. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4 cmt. 2 (UNIF. LAW COMM'N 2005) ("Because the forum court cannot enforce the foreign-country judgment until it has determined that the judgment will be given effect, recognition is a prerequisite to enforcement of the foreign-country judgment.").

183. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 481 (AM. LAW INST. 1987).

Recognition Acts and the Restatement require that a foreign judgment satisfy three fundamental elements to be recognizable: (1) the judgment must be final; (2) the rendering court must have had subject matter and personal jurisdiction under a U.S. standard; and (3) the rendering judicial system must provide impartial tribunals and due process.[184] Under the Recognition Acts and the Restatement, final judgments granting a sum of money are enforceable unless there is a mandatory or discretionary reason for non-recognition.[185]

1. Finality of Judgment

The Recognition Acts and Restatement both require that a judgment be final.[186] The Restatement defines a final judgment[187] as one that is entitled to execution in the rendering system and not subject to additional proceedings in the rendering court.[188] The Recognition Acts specify that judgments must be "final, conclusive, and enforceable" where rendered. These are distinct but related concepts.[189] They are distinct in that finality refers to the court proceeding—the relationship between the parties and the court; a judgment's conclusiveness refers to legal effect between the parties—the relationship between the parties *because of* court; and a judgment's enforceability refers to the plaintiff's ability to utilize an

184. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW §§ 481–84(1)(b); UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT §§ 3(a), 4(a)–(b)(3); UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT §§ 1(2), 2, 4(a) (UNIF. LAW COMM'N 1962).

185. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 482; UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 3(a)(2); UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 2.

186. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 481; UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 3; UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 2.

187. Because the Recognition Acts are largely codifications of the Restatement, the same definition of "final" judgment used in the Restatement should apply to both Recognition Acts. In fact, the 2005 Recognition Act adopts a similar definition of final: "A judgment is final when it is not subject to additional proceedings in the rendering court other than execution." UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 3 cmt. 3.

188. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 481 cmt. e.

189. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 3; UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 2.

enforcement procedure to collect the judgment from the debtor—the relationship between the plaintiff and the new proceeding.[190]

2. Jurisdiction

Under both Recognition Acts and the Restatement, a foreign judgment is not entitled to recognition unless the rendering court had subject matter jurisdiction over the claim.[191] When adopting uniform acts, however, state legislatures do not always adopt the uniform statute as written.[192] For example, although New York adopted the 1962 version of the Recognition Act, which considers the lack of subject matter as a mandatory basis for non-recognition, New York adopted a modified statute that demoted subject matter jurisdiction to a discretionary basis for non-recognition.[193]

Like subject matter jurisdiction, lack of personal jurisdiction is a mandatory basis for non-recognition under the Restatement and both Recognition Acts.[194] Despite the Recognition Acts' general rule denying recognition to judgments rendered without personal jurisdiction, both Recognition Acts list conditions where a lack of personal jurisdiction in the rendering court should not be grounds for refusing personal jurisdiction.[195] These exceptions to a lack of personal jurisdiction, however, reflect personal jurisdiction standards in the United States.[196] Although these exceptions would allow recognition of a foreign judgment rendered despite the rendering court's lack of personal jurisdiction, it does not frustrate party expectations because U.S. personal jurisdiction

190. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 3 cmt. 3.

191. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(b)(3); UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 4(a)(4). RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 481.

192. *See, e.g.*, N.Y. C.P.L.R. § 5304(b)(1) (CONSOL. 2012).

193. *Compare id.* (making lack of rendering court's subject matter jurisdiction a discretionary ground for non-recognition), *with* UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 4(a)(3) (making lack of subject matter jurisdiction a mandatory ground for non-recognition).

194. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(b)(2); UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 4(a)(2); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 482(1)(b).

195. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 5(a); UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 5(a).

196. UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT, Prefatory Note.

standards apply.[197] The Constitution's procedural safeguards also ensure U.S. courts only recognize judgments rendered by an impartial tribunal.

3. Impartial Tribunals

Judgments from judicial systems that are unlikely to afford an impartial trial are unenforceable under the Recognition Acts and the Restatement.[198] The impartial system of justice standard looks to a judicial system as a whole, not the peculiarities of specific proceedings culminating in the judgment.[199]

Proceeding-specific errors made in a judicial system likely to afford an impartial trial, however, are also within the ambit of the Recognition Acts and Restatement.[200] Fraud by the rendering court, for example, is still redressable.[201] The Recognition Acts list fraud as a discretionary ground for non-recognition.[202] In addition to mandatory and discretionary bases for non-recognition, there are also potential bases for non-recognition not included in the Recognition Act, such as reciprocity.

C. Reciprocity

First required in *Hilton* but rejected by state courts shortly thereafter, reciprocity[203] remains among the most controversial considerations in recognizing foreign judgments.[204] Reciprocity has a tremendous capacity to encourage and allow other nations to recognize U.S. judgments.[205] The Uniform Law Commission promulgated the 1962 Recognition Act with

197. The Restatement provides the same result. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 481.

198. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT; UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT.

199. Friedrich K. Juenger, *The Recognition of Money Judgments in Civil and Commercial Matters*, *in* RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS 310, 355 (Linda J. Silberman & Franco Ferrari eds., 2017).

200. *Id.*

201. *Id.*

202. UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 4(c)(2); UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(b)(2).

203. Reciprocity is the principle that a court recognizes and gives effect to a foreign court's judgment only if that foreign court similarly recognizes the first court's judgments. *See* Hilton v. Guyot, 159 U.S. 113, 205 (1895).

204. John F. Coyle, *Rethinking Judgments Reciprocity*, *in* RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS 601, 603 (Linda J. Silberman & Franco Ferrari eds., 2017).

205. Juenger, *supra* note 199, at 341.

the explicit purpose of putting foreign nations on notice that U.S. courts would recognize foreign judgments, which in turn would satisfy the foreign reciprocity requirements and make U.S. state judgments recognizable in foreign courts.[206] Despite neither of the Recognition Acts mentioning reciprocity, 10 states that adopted one of the Recognition Acts have included a reciprocity requirement.[207]

But imposing a reciprocity requirement can also unfairly disadvantage a citizen of a recognizing state who holds a judgment against a citizen of a non-recognizing nation.[208] Consider the following example. Person A, a citizen of Louisiana temporarily doing business in a nation that does not recognize U.S. judgments, successfully obtains a judgment in the foreign forum against Person B. Person A, the Louisiana citizen, will be unable to have the judgment recognized in a Louisiana court because the foreign court does not recognize U.S. judgments, thus failing the reciprocity requirement for recognition. Commentators have found such a result unfair because the average citizen has no control over a state's foreign judgment recognition statute and related reciprocity requirements.[209]

In addition to being unfair, a reciprocity requirement would be expensive.[210] The costs associated with reciprocity include judicial administrability,[211] unfairness to private litigants, and inefficiency for parties.[212] Although some costs can be mitigated,[213] the costs likely outweigh the benefits.[214] The principal benefit of reciprocity—fostering the recognition of U.S. judgments abroad—would be small because very

206. UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT, Prefatory Note.

207. Linda J. Silberman, *Some Judgements on Judgments: A View from America*, *in* RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS 349, 374 (Linda J. Silberman & Franco Ferrari eds., 2017).

208. Juenger, *supra* note 199, at 341.

209. *Id.* ("It seems unfair to penalize private litigants—who are neither to blame nor in a position to change matters—for the rendition state's lack of comity.").

210. Coyle, *supra* note 204, at 608.

211. Judicial administrability refers to the court's determination on whether a nation would recognize a judgment of the state's courts. *See id.* at 613 nn.39–40 (listing scholar arguments demonstrating judges lack the capacity to effectively resolve reciprocity inquiries).

212. *Id.* at 612.

213. The administrative cost on courts, for example, can be mitigated by requiring the party seeking non-recognition of a judgment to bear the burden of proving the foreign court's lack of reciprocity. *Id.* at 612–13.

214. *Id.* at 608.

few nations generally deny enforcing U.S. judgments.[215] Because the benefit is insignificant on a federal level, *a fortiori* the benefit to Louisiana would be truly insignificant.[216]

IV. A STATUTE IS SUITABLE FOR LOUISIANA'S MIXED-JURISDICTION STATUS

Louisiana, more than any other state in the United States, needs a statute to govern the recognition of foreign judgments because the Civil Code limits the sources of law to legislation and custom.[217] Although the Civil Code minimizes the importance of jurisprudence in Louisiana,[218] scholars have long noted the systemic respect of jurisprudence in Louisiana courts.[219] Even if the courts could establish foreign judgment recognition law, however, a comprehensive statute is a better solution than piecemeal judicial decisions. The Louisiana Legislature, and not the courts, should adopt the law governing foreign judgment recognition for three primary reasons: (1) enacted law is a primary source of law under the Civil Code; (2) a statute can contemplate various issues with clarity; and (3) a statute does not subject individual litigants to put judgments at stake to develop the law. A piecemeal framework by the courts would do the exact opposite.[220] Statutes give a clear and definite statement that addresses all future litigants on all issues of foreign judgment recognition; jurisprudential developments resolve only specific, narrow issues that are submitted to courts.

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215. Austria, China, Denmark, Finland, Iceland, Indonesia, Norway, Saudi Arabia, and Sweden generally deny enforcing U.S. judgments. *Id.* at 658.

216. For a full discussion of reciprocity and its associated costs, see *id.*

217. LA. CIV. CODE art. 1 (2016). The exception is *jurisprudence constante*, which, over time, may become customary law. *See id.* art. 3 (explaining how jurisprudence becomes custom under Louisiana law).

218. LA. CIV. CODE ANN. art. 1 cmt. b (2019) ("According to civilian doctrine, legislation and custom are authoritative or primary sources of law. They are contrasted with persuasive or secondary sources of law, such as jurisprudence . . . .").

219. Algero, *supra* note 31, at 779.

220. That is, a jurisprudential framework would not be a primary source of law under the Civil Code; it would be limited to the specific issues presented to the court for resolution; and it would subject each litigant to submit to the courts the enforceability of the foreign judgment *before* knowing what the rule governing the issue will be.

A. Louisiana's Mixed-Jurisdiction Legal Tradition

Louisiana is the only mixed-jurisdiction[221] state in the United States.[222] Traditionally, the civil and common law traditions treat the value of precedent differently.[223] Whereas common law systems apply the doctrine of stare decisis, systems rooted in the civil law tradition adhere instead to *jurisprudence constante*.[224] A.N. Yiannopoulos described the difference between *jurisprudence constante* and stare decisis: "A single case affords sufficient foundation for the latter, while a series of adjudicated cases, all in accord, forms the basis for the former."[225]

True to its civil law tradition, Louisiana has codified its sources of law in the Civil Code, limiting those sources to legislation and custom.[226] In a purely civilian legal system, the *Baker* court's opinion could be nothing more than one judge's interpretation of the law and would not be binding.[227] As but a single case, it could not acquire the force of law through *jurisprudence constante* either.[228] More to the point, the Civil Code specifically excludes jurisprudence from being a source of primary law.[229] Under such a framework, the *Baker* court's opinion cannot become law, and the Louisiana Legislature alone has the authority to enact a foreign judgment recognition framework.

Louisiana, however, is not a purely civilian legal system.[230] Louisiana's courts treat precedent differently than its civil law parents or its common law sister-states.[231] Despite the Civil Code's explicit reference to jurisprudence as a secondary source of law,[232] Louisiana courts have

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221. Louisiana is often considered a "mixed jurisdiction." "Mixed" refers to Louisiana's civilian legal tradition roots overlaid with attributes from the common law tradition. Algero, *supra* note 31, at 780.

222. *See generally* VERNON V. PALMER, MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY 5 (2d ed. 2012).

223. Algero, *supra* note 31, at 779.

224. *Id.*

225. A.N. YIANNOPOULOS, LOUISIANA CIVIL LAW SYSTEM 55, § 35.

226. LA. CIV. CODE art. 1 (2019).

227. Algero, *supra* note 31, at 779.

228. As formulated by A.N. Yiannopoulos, the standard for *jurisprudence constante* requires a series of cases. A single case would therefore be insufficient. *See* YIANNOPOULOS, *supra* note 225, § 35.

229. LA. CIV. CODE ANN. art. 1 cmt. b (2019).

230. *See generally* Algero, *supra* note 31.

231. Algero, *supra* note 31, at 781.

232. LA. CIV. CODE. art. 1 cmt. b (2019) ("According to civilian doctrine, legislation and custom are authoritative or primary sources of law. They are contrasted with persuasive or secondary sources of law, such as jurisprudence . . . .").

long recognized a "systemic respect for jurisprudence,"[233] and the Louisiana Supreme Court's opinions are "binding" in Louisiana courts.[234]

It follows that the *Baker* court's holding could be adopted by the Louisiana Supreme Court, which would in turn be binding on all Louisiana courts. Arguendo, this result does not resolve the crux of the recognition problem: Judgment creditors with foreign judgments would still not have a clear procedural method for recognizing and enforcing foreign judgments in Louisiana courts. The *Baker* court did not address the issue of recognizing foreign judgments.[235] It did not have to. The issue before the *Baker* court was whether the EFJA could be used to enforce a foreign judgment,[236] to which the court articulated a principled opinion that the EFJA was not enacted for that purpose and therefore may not be so used.[237]

Because it was not necessary in deciding the opinion, the *Baker* court did not delineate a standard for recognizing a foreign judgment, instead noting only that the more burdensome ordinary proceeding was still available for enforcement.[238] Using the ordinary proceeding may not be satisfactory for a multitude of reasons—not the least of which is the significantly increased burdens imposed relative to the EFJA's streamlined, *ex parte* enforcement method, as noted by the *Baker* court.[239] Moreover, ordinary process may create an unnecessary burden on judgment creditors with a sister-recognized judgment. Once again, the limited question presented to the *Baker* court produced a holding tailored

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233. Algero, *supra* note 31, at 781.

234. *See* Gauthreaux v. Rheem Mfg. Co., 588 So. 2d 723, 725 (La. Ct. App. 5th Cir. 1991) ("[A]s an intermediate appellate court we are bound to follow the precedent set by our Supreme Court."); La. Electorate of Gays and Lesbians, Inc. v. State, 812 So. 2d 626, 629 (La. 2002) ("[T]he law is what this court has announced it to be . . . .") ("This action involves, at least, a failure by the lower court to recognize its obligation to follow the law of this State as pronounced by this Court."); Lucky v. Fricks, 511 So. 2d 1315, 1317 (La. Ct. App. 2d Cir. 1987) ("Trial courts and courts of appeal are bound to follow the last expression of law of the Louisiana Supreme Court . . . ."); *see also* Algero, *supra* note 31, at 780. *But see* Constr. Materials, Inc. v. Am. Fid. Fire Ins. Co., 388 So. 2d 365 (La. 1982) ("[T]he decisions of a court of last resort are not the law, but only evidence of what the court thinks is the law."); Prytania Park Hotel, Ltd. v. Gen. Star Indem. Co., 179 F.3d 169, 175 (5th Cir. 1999) ("Jurisprudence, even when it rises to the level of *jurisprudence constante*, is a secondary source in Louisiana.").

235. *See generally* Baker & McKenzie Advokatbyra v. Thinkstream Inc., 20 So. 3d 1109 (La. Ct. App. 1st Cir. 2009).

236. *Id.* at 1118–20.

237. *Id*.

238. *Id*. at 1118.

239. *Id*. at 1119 n.10.

to a narrow question. The corollary is that many further questions are left unanswered, including whether the EFJA extends to sister-recognized judgments.

Thus, although the Louisiana Supreme Court could develop a recognition framework, merely adopting the *Baker* court's opinion would not remove the need for a recognition statute in Louisiana. And, if the Louisiana Supreme Court were to further develop the recognition framework, a Louisiana litigant, being unable to predict what foreign judgment recognition framework the Louisiana Supreme Court may develop, would be forced to risk the enforceability of a judgment. Even in situations where the perceived risk of a court denying enforcement may be lower, such as a proceeding to enforce a sister-recognized judgment under the EFJA, a Louisiana litigant still faces a risk of losing on the enforcement. The Louisiana Supreme Court could determine that sister-recognized judgments are "judicial Acts" under the meaning of the Full Faith and Credit Clause of the United States Constitution,[240] but it could also do the opposite and decline enforcement.[241] A Louisiana litigant should not be forced to put a judgment at stake to determine the law. Unless the legislature acts, however, that is exactly what will happen in developing a recognition framework.

Considering the multitude of questions that judgment creditors may have as to the scope of the *Baker* court's opinion, a statute is favorable to jurisprudence for establishing Louisiana's foreign judgment law. Even if the Louisiana Supreme Court were to adopt the *Baker* court's opinion, the courts would still be without a clear procedural method for enforcing a foreign judgment. *Baker*'s decision held only that judgment creditors cannot use the EFJA to enforce foreign judgments and must instead use the ordinary proceeding, but it determined nothing more. The increased burdens associated with ordinary procedure may not be necessary in all situations—for example, when recognizing sister-recognized judgments if sister-recognized judgments are determined to be entitled to full faith and credit. A statute can explicitly state that a sister-recognized judgment is entitled to full faith and credit and is therefore directly enforceable under the EFJA. The statute can also provide the factors that a court ought to consider when recognizing a foreign judgment. Moreover, a statute is a primary source of law as contemplated by article 1 of the Civil Code.

240. *See, e.g.*, Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros. Co., 99 A.3d 936 (Pa. Super. Ct. 2014).

241. *See, e.g.*, Reading & Bates Constr. Co. v. Baker Energy Res. Corp., 976 S.W.2d 702 (Tex. App. 1998).

B. Louisiana's Statute Must Consider Full Faith and Credit Implications

Without an international obligation similar to the Full Faith and Credit Clause, sister-state judgments and foreign judgments remain fundamentally different.[242] Under the Full Faith and Credit Clause, states have an obligation to enforce judgments from sister states.[243] In contrast, comity does not impose an obligation to recognize foreign judgments; comity is merely a tool used for convenience.[244] The *Baker* court, recognizing this distinction, held that the EFJA is inapplicable to foreign judgments.[245] In apparent approval, the Louisiana Legislature subsequently adopted this decision in an Editor's Note to Code of Civil Procedure article 2541.[246]

The removal of the EFJA from a foreign judgment creditor's toolbox creates a problem similar to that which prompted the EFJA in 1964.[247] The EFJA's prefatory notes explain that, although the United States Constitution does not require a full due-process proceeding on the enforcement proceeding, it was generally the only route since states had not adopted any alternative procedures.[248] In response, the Uniform Law Commission drafted the EFJA to codify an enforcement procedure that allowed courts to enforce sister-state judgments without requiring the judgment creditor to prove the judgment's validity.[249] Judgment creditors of foreign judgments face the same issue after the *Baker* court's decision.[250] According to *Baker*, foreign judgment creditors may only proceed by "ordinary action."[251] As the *Baker* court noted, an ordinary action is "the same as that in any other ordinary proceeding and is therefore subject to the same rules for pleading and trial."[252] Additionally, the

242. U.S. CONST. art. IV, § 1, cl. 1.

243. *Id.*

244. Hilton v. Guyot, 159 U.S. 113, 163–64 (1895) (stating that comity is not "a matter of absolute obligation" but instead stems from "international duty and convenience.").

245. Baker & McKenzie Advokatbyra v. Thinkstream Inc., 20 So. 3d 1109, 1111 (La. Ct. App. 1st Cir. 2009).

246. LA. CODE CIV. PROC. art. 2541, Editor's Note (2016).

247. "Drafted" here refers to the Uniform Law Commission drafting the statute; it does not refer to the Louisiana Legislature enacting the statute. REVISED UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT, Prefatory Note (UNIF. LAW COMM'N 1964).

248. *Id.*

249. *Id.*

250. *See Baker*, 20 So. 3d 1109.

251. *Id.* at 1118–20.

252. *Id.* at 1119 n.10.

ordinary proceeding imposes heightened citation and service requirements and requires a trial.[253]

Although the *Baker* decision leaves foreign judgment creditors with a similar dilemma as sister-state judgment creditors prior to the EFJA, the two types of judgments have a fundamental difference that warrants their divergent treatment. Unlike sister-state judgments, foreign judgments do not come clothed with full faith and credit.[254] The Full Faith and Credit Clause imposes a duty on states to enforce sister-state judgments,[255] which are presumed to be fair and competent.[256] This presumption reflects that decisions from any court in the United States are guided by the same procedural safeguards and due process requirements that the Constitution imposes. The presumption is also supported by the fact that socioeconomic ideas spurring the development of law are likely to be similar across states.[257] The similarity in legal consideration among states leaves few constitutional reasons to deny enforcement of sister-state judgments under the Full Faith and Credit Clause.[258]

In contrast, states do not have an obligation to recognize or enforce foreign judgments and may deny doing so for several reasons.[259] In addition to the lack of an obligation, foreign judgments do not come with a presumption of fairness.[260] These differences warrant judicial inquiry into the rendering court's decision that would be inappropriate for a sister-state judgment.[261] But, once a court in the United States looks behind the curtain and recognizes a foreign judgment, thereby affirming that the judgment comports with U.S. legal standards, the distinction between sister-state and foreign judgments disappears. The solution, then, is a procedural system that confers full faith and credit to foreign judgments upon recognition.

253. *Id.* (noting that the citation and service standards are higher than the EFJA's requirements and that the ordinary procedure requires a trial, whereas the EFJA does not).

254. *Id.* at 1117–20.

255. U.S. CONST. art. IV, § 1, cl. 1.

256. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 6 cmt. 1 (UNIF. LAW COMM'N 2005).

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

The Uniform Law Commission enacted a similar procedural system in the 1962 and 2005 Recognition Acts.[262] The Recognition Acts "provide[] parties who have previously litigated an issue with a tool for enforcing money judgments . . . in the same manner as the judgment of a sister state entitled to full faith and credit."[263] This system allows for streamlined enforcement of foreign judgments,[264] and a court's affirmative recognition of a foreign judgment can serve as a basis for demanding that another court grant enforcement pursuant to the Full Faith and Credit Clause.[265]

A statute governing the recognition and enforcement of foreign judgments is a strong solution that many states adopt by enacting both the EFJA and a Recognition Act.[266] The *Baker* court correctly concluded that the judgment creditor's only option was through an ordinary proceeding, denying the use of the EFJA to enforce foreign judgments.[267] This EFJA limitation exposes Louisiana's gap in foreign judgment law, and the Louisiana Legislature can resolve this gap with a simple statute.

C. The Statute's Rationale—What Law and Why

The Louisiana Legislature should enact the 2005 Recognition Act. Many states have adopted a version of the Recognition Act, and Louisiana's adoption would further foster uniformity for litigants and give Louisiana courts a wealth of statutory interpretation.[268] The legislature would have the benefit of seeing current statutory interpretation conflicts in other states, making it well-positioned to contemplate and directly address the issues.[269] A primary issue regarding the interplay between the

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262. *Id.*; UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT (UNIF. LAW COMM'N 1962).

263. Aguerre v. Schering-Plough Corp., 924 A.2d 571, 578 (N.J. Super. Ct. App. Div. 2007).

264. Sung Hwan Co. v. Rite Aid Corp., 850 N.E.2d 647 (N.Y. 2006).

265. Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros. Co., 99 A.3d 936 (Pa. Super. Ct. 2014).

266. *Foreign-Country Money Judgments Recognition Act*, *supra* note 21; *Foreign Money-Judgments Recognition Act*, *supra* note 21.

267. LA. CIV. CODE. art. 1 (2016) (recognizing the sole sources of law in Louisiana as "legislation and custom").

268. In deciding the applicability of the EFJA, the *Baker* court looked to how other state courts have interpreted the EFJA's applicability. Baker & McKenzie Advokatbyra v. Thinkstream Inc., 20 So. 3d 1109, 1117 (La. Ct. App. 1st Cir. 2009).

269. *Compare* Ahmad Hamad Al Gosaibi & Bros. Co. v. Standard Chartered Bank, 98 A.3d 998, 1005 (D.C. 2014), *with Standard Chartered Bank*, 99 A.3d at 936.

2005 Recognition Act and EFJA is whether the Full Faith and Credit Clause applies to sister-recognized judgments.[270]

1. Full Faith and Credit

Although the Full Faith and Credit Clause does not apply to the enforcement of foreign judgments,[271] courts have disagreed on whether it becomes applicable once a state court recognizes a foreign judgment.[272] Under the Recognition Acts, a recognition proceeding culminates in a judicial decision regarding the enforceability of a foreign judgment within that state.[273] Some states have held the judicial determination granting recognition to be a judicial proceeding under the meaning of the Full Faith and Credit Clause, thus requiring other state courts to give that decision the same effect it would have in the rendering state.[274] Under this theory, states must enforce sister-recognized judgments through the enforcement state's EFJA.[275] Other states reject this approach, holding instead that recognition does not implicate the Full Faith and Credit Clause.[276] The *Reading & Bates* court exemplified the latter reasoning, holding that each state should be able to determine the criteria for enforcing foreign judgments within its borders and that ceding that right through "back door" enforcement is tantamount to ceding its state autonomy.[277]

Although the Supreme Court has not specified which interpretation of the Full Faith and Credit Clause applies to sister-recognized judgments,[278] the Court is unlikely to adopt the *Reading & Bates* approach for two reasons. First, the Court has stated that a civil money judgment suit is not an exception to the Full Faith and Credit Clause in *Magnolia Petroleum*

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270. *Compare Ahmad Hamad Al Gosaibi*, 98 A.3d at 1005, *with Standard Chartered Bank*, 99 A.3d at 936.

271. *See* Aetna Life Ins. v. Tremblay, 223 U.S. 185, 190 (1912).

272. *Compare Ahmad Hamad Al Gosaibi*, 98 A.3d at 1005, *with Standard Chartered Bank*, 99 A.3d at 936.

273. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 7 (UNIF. LAW COMM'N 2005).

274. *See* U.S. CONST. art. IV, § 1, cl. 1.

275. *Standard Chartered Bank*, 99 A.3d at 936.

276. *Ahmad Hamad Al Gosaibi*, 98 A.3d at 1005.

277. Reading & Bates Constr. Co. v. Baker Energy Res. Corp., 976 S.W.2d 702 (Tex. App. 1998).

278. The *Magnolia* Court did not specifically contemplate using the "back door" for foreign judgment enforcement; its holding is limited to enforcing sister-state judgments. Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 438 (1943).

Co. v. Hunt.[279] To be sure, the *Magnolia* Court did not specifically address a sister-recognized judgment; however, the Court's use of "civil money judgment" includes sister-recognized judgments.[280] Second, the Supreme Court has rejected the premise on which *Reading & Bates* is founded.[281]

The *Reading & Bates* court refused to recognize a sister-recognized judgment to prevent Texas courts from being used as a "back door."[282] Previous to *Reading & Bates*, however, the Supreme Court had rejected the back door argument—where strict laws of one state could be thwarted by a more lax state—in another policy-based case, *Williams v. North Carolina*.[283] The *Williams* Court noted that the very purpose of the Full Faith and Credit Clause was to obligate states to recognize the laws of other states.[284] The back door is "part of the price of our federal system."[285]

Constitutional requirements, such as the Full Faith and Credit Clause, cannot be eroded by a state statute. In drafting a statute, however, understanding which of two diverging practices is likely to stand the test of time is important to promote predictability and protect reasonable expectations of parties relying on a statute. The Louisiana Legislature should include statutory language stating that courts must enforce sister-recognized judgments through the EFJA. Such a provision would require very little modification of the 2005 Recognition Act.

2. The 2005 Recognition Statute Is Ideal for Louisiana

The Uniform Law Commission promulgated the 2005 Recognition Act as an updated version of the 1962 Recognition Act.[286] The 2005 Act

279. *Id*. ("We are aware of no such exception in the case of a money judgment rendered in a civil suit.").

280. *Id*.

281. *Id*.

282. The *Reading & Bates* court directly addressed the "back door" issue:

> We reserve the right of Texas courts to evaluate foreign country judgments accordingly. To recognize the Louisiana judgment is tantamount to ceding that right to our sister state. We will not permit a party to clothe a foreign country judgment in the garment of a sister state's judgment and thereby evade the our [*sic*] own recognition process.

Reading & Bates, 976 S.W.2d at 715.

283. Williams v. North Carolina, 317 U.S. 287, 302 (1942).

284. *Id.* at 295 (quoting Milwaukee Cty. v. M.E. White Co., 296 U.S. 268, 376–77 (1935)).

285. *Id.* at 302.

286. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT, Prefatory Note (UNIF. LAW COMM'N 2005).

is preferable to the 1962 Act for three primary reasons. First, the 2005 Recognition Act provides a specific procedural framework for recognizing foreign judgments not present in the 1962 version.[287] The procedures protect against litigants using the EFJA to recognize and enforce a foreign judgment,[288] which was the central issue in *Baker*.[289] Second, the 2005 Recognition Act establishes the effect that a court's recognition confers to foreign judgments.[290] The effect that recognition gives foreign judgments determines, among other things, whether courts treat the judgments as having full faith and credit.[291] Finally, 24 states have adopted the 2005 Recognition Act, which demonstrates notable acceptance of the 2005 Act and makes it more likely that the 2005 Recognition Act will be the prevailing method of recognition into the future.[292] Of these 24 states, many previously enacted the 1962 Recognition Act and replaced it with the 2005 Recognition Act.[293] In addition, three states[294] that had not enacted any recognition law decided to enact the 2005 version, and another state is currently considering adopting the 2005 Recognition Act.[295]

Like its predecessor, the 2005 Recognition Act allows courts to recognize foreign judgments that are final, conclusive, and enforceable where rendered.[296] Both Recognition Acts also establish three mandatory grounds and several discretionary grounds for non-recognition.[297] As to the effects of judgments, however, the 1962 Recognition Act provides only that foreign judgments are enforceable to the same extent as sister-state judgments that are entitled to full faith and credit.[298] This language

287. *Id.* § 6.

288. The 2005 Act provides that the EFJA cannot recognize judgments. *See* UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT, § 6.

289. Baker & McKenzie Advokatbyra v. Thinkstream Inc., 20 So. 3d 1109 (La. Ct. App. 1st Cir. 2009).

290. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 7.

291. *Id.* § 7(1)–(2).

292. *Foreign-Country Money Judgments Recognition Act*, *supra* note 21.

293. California, Colorado, Georgia, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Iowa, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Texas, Virginia, and Washington. *See id.*

294. Arizona, Alabama, and Indiana. *See id.*

295. Tennessee Act No. 275, 2019 Tenn. Pub. Acts 1162.

296. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(a); UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 2 (UNIF. LAW COMM'N 1962).

297. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT, § 4(b)–(c); UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 4(a)–(b).

298. UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT, Prefatory Note.

leaves open for courts the ability to interpret when to apply the 1962 Recognition Act's mandatory and discretionary bases for non-recognition.[299] The 2005 Act, in contrast, explicitly establishes the procedural framework necessary to invoke the Recognition Act[300] and further provides definitive bounds to the effects that recognition gives to a foreign judgment.[301] The thoroughness of the 2005 Recognition Act partially explains its rapid success, and a Louisiana statute would provide clarity with a few modifications.

3. Necessary Amendments to Adopt the 2005 Recognition Act

The Louisiana Legislature should consider two principal issues when adopting the 2005 Recognition Act. First, it must provide procedures that govern the interplay between the EFJA, the Recognition Act, and Code of Civil Procedure article 2541. Article 2541, by its own terms, governs the procedures applicable to recognition *and* enforcement of foreign country judgments *and* sister-state judgments.[302] The Recognition Act would govern recognition, which would require an amendment to article 2541. Further, the EFJA governs enforcement, which must work in tandem with the new Recognition Act, requiring another clarifying amendment to article 2541's EFJA provision and a change to the standard 2005 Recognition Act's language.

The second issue that the legislature should consider is the effect of sister-recognized judgments under the modified EFJA. Because the 2005 Recognition Act provides that a recognized judgment will have the same effect as a judgment rendered by the recognizing court, and because a sister-state's decision recognizing a foreign judgment is a "judicial Proceeding" under the Full Faith and Credit Clause, Louisiana courts would be obligated to enforce sister-recognized judgments.[303]

a. Interplay Among the Code of Civil Procedure, the 2005 Recognition Act, and the EFJA

In ensuring that the legislature seamlessly unifies the 2005 Recognition Act with article 2541 and the EFJA, collectively forming Louisiana's foreign judgment laws, the legislature must modify the Recognition Act's standard language and amend article 2541 and the EFJA. The legislature

299. *Id.*
300. *Id.* § 6.
301. *Id.* § 7.
302. LA. CODE CIV. PROC. art. 2541 (2016).
303. *See* U.S. CONST. art. IV, § 1, cl. 1.

needs to modify only one aspect of the 2005 Recognition Act to demonstrate its intent that the new Recognition Act works in conjunction with the EFJA. The 2005 Recognition Act provides that courts must enforce recognized judgments in the same manner as sister-state judgments. This language leaves open the opportunity for litigants to creatively argue semantics. The legislature should instead grant recognized judgments an additional effect in the Recognition Act by explicitly stating that judgments recognized pursuant to the Recognition Act are enforceable under the EFJA. With the proposed changes underlined and omissions marked by strikethrough, the effects section would provide:

> **SECTION 7. EFFECT OF RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.** If the court in a proceeding under Section 6 finds that the foreign-country judgment is entitled to recognition under this [Act] then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:
> (1) conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; ~~and~~
> (2) enforceable in the same manner and to the same extent as a judgment rendered in this state~~.~~; and
> (3) enforceable through the registration procedure provided by EFJA.

The suggested subsection indisputably demonstrates the legislative intent that recognized judgments may be enforced with the EFJA. Moreover, the addition clearly—and with more certainty than subsection two—instructs parties how a recognized judgment may be enforced.

More important than the Recognition Act's language, however, is the language defining the EFJA's scope. Indeed, the *Baker* court held that the EFJA did not apply to foreign judgments because of the EFJA's limited scope.[304] To ensure the EFJA's applicability to judgments recognized under the Recognition Act, the legislature should expand the EFJA's scope.[305] Such an addition would provide:

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304. The *Baker* court noted that the EFJA applied to judgments entitled to full faith and credit, which excluded foreign judgments. Baker & McKenzie Advokatbyra v. Thinkstream, 20 So. 3d 1109, 1117–20 (La. Ct. App. 1st Cir. 2009). The full faith and credit limitation stems from the EFJA's language in its definitions section. LA. REV. STAT. § 13:4241 (2016).

305. Jon H. Sylvester and Richard J. Graving took a similar approach in addressing the 1962 Recognition Act's deficiencies. At least as to the EFJA's

§ 4241. Definition

In this Part "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, or any foreign judgment as defined in Section 1 of the Recognition Act.

This simple addition allows the Recognition Act and the EFJA to work in harmony. Moreover, cross-referencing the two Acts, without further qualifying language,[306] settles any doubt as to the legislative intent.

Finally, the legislature must also amend Code of Civil Procedure article 2541 to reflect the new Recognition Act and the changes made to the EFJA. This amendment is threefold. First, the legislature should add a separate provision within article 2541 that creates an alternative method of recognizing foreign judgments. Second, the legislature must modify article 2541's EFJA provision to include enforcement of judgments recognized pursuant to the Recognition Act. Finally, the legislature should distinguish or remove the Editor's Notes to article 2541 regarding *Baker*, which state that the EFJA is inapplicable to foreign judgments. The proposed language should read as follows:

Art. 2541. Execution of foreign judgments

A. A party seeking recognition or execution by a Louisiana court of a judgment or decree of a court of the United States or a territory thereof, or of any other state, or of any foreign country may bring an ordinary proceeding against the judgment debtor in the proper Louisiana court, to have the judgment or decree recognized and made the judgment of the Louisiana court.

B. A duly authenticated copy of the judgment or decree must be annexed to the petition.

C. A judgment, decree, or order of a court of the United States or any other court that is entitled to full faith and credit in this state, or any judgment recognized pursuant to the Recognition Act, may

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modification, their approach applies with equal strength in connecting the EFJA with the 2005 Recognition Act. Richard J. Graving & Jon H. Sylvester, *Is the Uniform Foreign Money-Judgments Recognition Act Potentially Unconstitutional? If So, Should the Texas Cure Be Adopted Elsewhere?*, 25 GEO. WASH. J. INT'L L. & ECON. 737, 790 (1992).

306. Qualifying language can defeat a statute's application. For example, the *Baker* court held the EFJA inapplicable because its scope was limited to judgments entitled to full faith and credit. *Baker*, 20 So. 3d at 1117–20.

also be enforced pursuant to R.S. 13:4241.
D. A judgment, decree, or order of a foreign court may be recognized pursuant to the Recognition Act.

Editor's Notes

For alternative method of enforcing foreign judgments, see R.S. 13:4241.
Baker & McKenzie Advokatbyra v. Thinkstream, 20 So.3d 1109 (La. App. 1 Cir. 2009). Louisiana's enforcement of Foreign Judgments Act, R.S. 18:4241 et seq., generally allowing the enforcement in Louisiana of judgments of the other courts of the United States entitled to full faith and credit, did not apply to a judgment from Oregon that was a "transcribed" judgment from Sweden. The defendant showed clearly that Oregon had no personal jurisdiction over the defendant. Judgments from abroad are not subject to the full faith and credit laws of this country.
~~In~~ Prior to the Recognition Act, in order to enforce the Swedish judgment, it would be necessary to do it through an ordinary proceeding, not through the statute.
Reference to the Recognition Act in subsections C and D are new. The Recognition Act provides a streamlined process for recognizing foreign-country money judgments and provides enforcement pursuant to the EFJA. The preceding note on the *Baker* court's holding is limited to prohibiting parties from using the EFJA to recognize foreign judgments. The Recognition Act hereby removes any doubt that the EFJA may be used to enforce judgments recognized pursuant to the Recognition Act.

The amended language in subsections C and D references the Recognition Act and the EFJA, and the addition to the Editor's Notes summarizes the connection among article 2541, the EFJA, and the Recognition Act. The modification to the existing Editor's Notes reinforces legislative intent by clarifying that the Recognition Act removes the bar on judgment enforcement through the EFJA. Further, the added note explicitly affirms that the legislature intends the Recognition Act and the EFJA to work in conjunction with each other and that judgments recognized pursuant to the Recognition Act may be enforced pursuant to the EFJA.

b. Full Faith and Credit for Sister-Recognized Judgments Pursuant to the EFJA

In addition to the seamless interplay among proposed foreign judgment laws, the legislature should also consider Louisiana courts' full

faith and credit obligation to enforce sister-recognized foreign judgments. The proposed Recognition Act provides a concrete procedural system for recognizing and enforcing foreign judgments in Louisiana courts. Even with the amendments already suggested, however, Louisiana law does not explicitly address the enforceability of sister-recognized judgments under the EFJA.

Because the United States Supreme Court would likely rule that sister-recognized judgments are enforceable through another state's EFJA procedure,[307] a Louisiana statute should adopt and make known this standard. To provide this certainty, the legislature should modify the EFJA. The legislature can clarify the full faith and credit obligation in the EFJA by further defining applicable judgments to include sister-recognized judgments. The proposed statute would read as follows:

> **§ 4241. Definition**
> In this Part "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, or any foreign judgment as defined in Section 1 of the Recognition Act.
> For purposes of this Section, a "judgment, decree, or order" shall include any affirmative recognition of a foreign judgment by a court of the United States. Such affirmative recognition by a court of the United States is entitled to full faith and credit in this state.

This amendment expands the scope of the EFJA to conform with Louisiana's obligations under the Full Faith and Credit Clause. By further defining the judgment, decree, or order of other courts to include sister-recognized judgments, Louisiana affirmatively provides this constitutional guarantee to judgment creditors. Moreover, the second added sentence serves to prevent litigation attempting to draw a line between sister-state recognitions entitled to full faith and credit and those that are not entitled to full faith and credit.[308] The language removes such challenges by providing that sister-recognized judgments are inherently entitled to full faith and credit.

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307. The Supreme Court has denied the "back door" argument, which is the theory that lends support to denying sister-recognized judgments. *See* Williams v. North Carolina, 317 U.S. 287, 302 (1942). So has Texas. Reading & Bates Constr. Co. v. Baker Energy Res. Corp., 976 S.W.2d 702, 715 (Tex. App. 1998).

308. A party may assert that only certain courts' judgments, decrees, or orders recognizing foreign judgments are entitled to full faith and credit in Louisiana. The criteria used to determine which courts' recognitions are entitled to full faith and credit in Louisiana could include, for example, whether the recognizing state has a recognition law similar to Louisiana's—or a recognition law at all.

The legislature would not need to further amend Code of Civil Procedure article 2541. Article 2541 already provides that any judgment entitled to full faith and credit is enforceable through the EFJA. The EFJA's amendment, stating that sister-recognized judgments are entitled to full faith and credit, links article 2541 to the EFJA.

CONCLUSION

Adopting the 2005 Recognition Act with the proposed changes would give judgment creditors an alternative to Louisiana's burdensome ordinary proceeding,[309] which subjects successful judgment creditors to a second due-process hearing.[310] A statutory approach is preferable to piecemeal judicial opinions because it provides litigants with greater clarity on more issues and does not force Louisiana litigants to put the enforceability of their judgments at stake to develop the recognition law. The Full Faith and Credit Clause was essential to the United States' economic growth during the 1900s, and the Uniform Law Commission promulgated the first EFJA to codify the states' obligation.[311] In today's global economy, parties are increasingly dependent on international trade,[312] and the Uniform Law Commission has promulged a foreign judgment Recognition Act.[313] The Louisiana Legislature adopted the EFJA in 1985 to give sister-state

309. *Baker*, 20 So. 3d at 1117–20.

310. An important distinction between the original and second trial, however, is that the first trial is centered on the merits of the original cause of action, whereas the second trial hinges on whether the foreign judgment should be recognized under principles of comity. REVISED UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT, Prefatory Note (UNIF. LAW COMM'N 1964) ("While there is no constitutional requirement that a debtor who has had a full due process trial in one state need be given a second full scale trial on the judgment in another state, this is the only course generally available to creditors."); *Baker*, 20 So. 3d at 1119 n.10 (noting that the plaintiff must file an action on the judgment and "is therefore subject to the same rules for pleading and trial . . . . And, in contrast to the ex parte grant of a judgment under [the EFJA], a trial is required [in an ordinary proceeding.]").

311. UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT (UNIF. LAW COMM'N 1948).

312. Rapture Shipping, Ltd. v. Allround Fuel Trading B.V., 350 F. Supp. 2d 369, 373 (S.D.N.Y. 2004) ("The importance of extending comity . . . has only increased as our economy has become increasingly global and dependent upon international commerce.").

313. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT §§ 3(a), 4(a)–(b)(3) (UNIF. LAW COMM'N 2005); UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT §§ 1(2), 2, 4(a) (UNIF. LAW COMM'N 1962).

judgments a streamlined enforcement process,[314] and it should do the same for foreign judgments in 2020.

314. Act No. 464, 1985 La. Acts 882 (codified at LA. REV. STAT. §§ 13:4241–47 (2016)).